

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the Petition of)	
Intrado Communications of Virginia Inc. for)	
Arbitration Pursuant to Section 252(b))	
of the Communications Act of 1934, as Amended,)	WC Docket No. 08-33
to Establish an Interconnection Agreement with)	
Central Telephone Company of Virginia and)	
United Telephone Southeast LLC)	

In the Matter of the Petition of)	
Intrado Communications of Virginia Inc. for)	
Arbitration Pursuant to Section 252(b))	WC Docket No. 08-185
of the Communications Act of 1934, as Amended,)	
to Establish an Interconnection Agreement with)	
Verizon South Inc. and Verizon Virginia Inc.)	

**COMMENTS OF CENTRAL TELEPHONE COMPANY OF VIRGINIA D/B/A
EMBARQ AND UNITED TELEPHONE SOUTHEAST LLC D/B/A EMBARQ**

Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq (collectively, "Embarq")¹ respectfully file comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice released on June 4, 2009 in the above-referenced dockets.² The Commission sets forth a specific issue for comment: "How competition in the provision of the 911 network to the [public safety answering points or] PSAPs and other public safety agencies would impact the provision of public safety

¹ Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq provide services under the Embarq trade name. Effective July 1, 2009, they are indirect, wholly-owned subsidiaries of CenturyTel, Inc. The new company will be known as CenturyLink.

² Public Notice, DA 09-1262 (rel. June 4, 2009).

services in Virginia.”³ While Section 51.807(g) of the Commission’s rules⁴ limits participation in arbitration proceedings to the parties involved, the Commission states it has waived this rule here because it believes that the complex policy issues of competitive provision of 911 services raised by this proceeding are best resolved with maximum participation by all interested parties.

While Embarq supports the Commission’s examination of the effect of competition in the provision of 911, Embarq does not believe the instant arbitration is the appropriate forum. The Commission is presently considering a threshold legal issue in this arbitration -- that is, whether Intrado Communications of Virginia Inc. (“Intrado”) is entitled to interconnection pursuant to Section 251(c) of the Act.⁵ This question turns principally on whether Intrado is providing “telephone exchange service” as defined by the Act. It is not dependent upon the policy implications of competitive 911 service. Those issues are a separate matter that appropriately would be considered elsewhere, in a general rulemaking proceeding or inquiry.

I. The Public Notice Seeks Comment on a Policy Issue That Is Beyond the Scope of the Issue the Commission is Presently Considering in the Arbitration.

The instant arbitration between Intrado and Embarq was initially brought before the Virginia State Corporation Commission (“VSCC”), but the VSCC deferred the matter. In its deferral, the VSCC concluded there was a “threshold issue that should be determined by the [FCC],” based on the VSCC’s finding that “the FCC is the more appropriate agency to determine whether Intrado is entitled to interconnection pursuant to Section 251(c) of the

³ *Id.* at 2.

⁴ 47 C.F.R. § 51.807(g).

⁵ 47 U.S.C. § 251(c).

Telecommunications Act.”⁶ Intrado then petitioned the Commission for preemption of the VSCC’s jurisdiction in order to arbitrate pending interconnection matters between Intrado and Embarq, and the Commission granted Intrado’s petition. The Commission concluded that it should first resolve the issue of whether Intrado is entitled to interconnection under Section 251(c), and address any remaining issues separately in a second phase of proceedings. After briefing was concluded, the Commission consolidated, for decision on this issue, the Embarq/Intrado arbitration with Intrado’s similar arbitration petition involving Verizon South Inc. and its affiliate, Verizon Virginia Inc. (collectively, “Verizon”).

The Commission recognized that its decision on this statutory issue would impact some of the other disputed issues raised by the arbitrations. The Commission concluded it would be appropriate, and more efficient, to address the Section 251(c) issue first, before addressing the other substantive issues. Consequently, as a practical matter, the only issue currently before the Commission in this consolidated arbitration case is that “threshold” issue – whether or not Intrado’s particular business model, structure, and service offering qualifies for Section 251(c) interconnection under the Act.

Embarq’s filings in this proceeding have acknowledged that Intrado may be a telecommunications carrier entitled to interconnection under Section 251(a).⁷ Embarq companies have readily offered to interconnect with Intrado on commercial terms, and Embarq

⁶ Petition of Intrado Communications of Virginia, Inc. for Arbitration to Establish an Interconnection Agreement with Central Telephone Company of Virginia d/b/a Embarq, Under Section 252(b) of the Telecommunications Act of 1996, Order of Dismissal, Virginia State Corporation Commission, Case No. PUC-2007-00112 (Feb. 14, 2008), at 2.

⁷ 47 U.S.C. § 251(a). *See, e.g.*, Answer of Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq to Intrado Communications of Virginia Inc.’s Petition for Arbitration, WC Docket No. 08-33 (filed Sept. 8, 2009), at Exhibit A, p. 1.

and Intrado successfully reached a section 251(a) interconnection agreement in Florida. However, Embarq believes it is clear that Intrado is not entitled to demand interconnection pursuant to Section 251(c) in this arbitration, because -- under its business model in Virginia, if not in all states -- it is not providing “telephone exchange service” as defined in the Act.⁸ The filings submitted by the parties in the consolidated arbitrations establish that Intrado is not providing the requisite “telephone exchange service” and thus is not entitled to demand Section 251(c) interconnection rights.

Embarq need not repeat those arguments here. It is sufficient to note that the policy question posed by the Commission in its Public Notice and any submissions in response to that notice -- by the parties or others -- cannot change this conclusion. Regardless of any potential policy benefits or drawbacks would be for competitive 911 service, an interconnector must meet the legal standard under Section 251(c) to obtain Section 251(c) interconnection.⁹ Policy considerations do not alter the legal analysis, and cannot be used to expand interconnection rights that Intrado is not legally entitled to under the Act. Accordingly, the broad issue raised in the Public Notice -- important though it is -- ultimately can have no bearing on the issue pending in the present Virginia arbitrations.

II. Arbitration is Not the Appropriate Context for Addressing the Broad Policy Issues Raised by Competitive 911 Service.

The introduction of competition into the provision of 911 service could have far-reaching policy implications that will undoubtedly require the Commission’s guidance. But that policy

⁸ 47 U.S.C. § 153(47).

⁹ Significantly, the Public Notice is not seeking comment on whether Intrado is providing “telephone exchange service” and is eligible for Section 251(c) interconnection. Any comments on that issue are beyond the scope of the Public Notice and cannot properly or fairly be considered.

debate needs to occur in the appropriate proceeding, with full notice and comment to the public, and including active participation by the public safety community, carriers, and other stakeholders affected by the policies relating to competitive 911.

Embarq can foresee the competitive provision of 911 services raising a myriad of complex issues. These issues include, but are certainly not limited to:

- the effects of competition on continued 911 network reliability;
- state funding issues for all 911 competitors;
- impacts on all carriers routing calls to 911; and
- transitioning to a next generation, IP-based platform.

Just examining connectivity issues briefly, for example, shows how many questions are triggered by the Public Notice's broad inquiry. Having competitive providers of 911 services means PSAPs and carriers providing service in the state will need to provision new trunks whenever competitors enter the market. Such provisioning necessarily involves some risk to 911 connectivity, during the transition and long term. That same provisioning also could impose considerable, unknown costs on PSAPs and on other interconnecting carriers providing service in the state, and at a time when limited resources might be better invested improving 911 service in other ways. Also, when a competitor leaves the market, there is additional risk to 911 service and emergency call routing, as well as additional costs imposed on PSAPs and carriers.

None of these issues -- or any of the many other concerns raised by competitive 911 service -- is before the Commission in the Virginia arbitrations. Nor would it be appropriate for the Commission to consider them here. The instant arbitration is an adjudicatory proceeding between the affected parties in Virginia. It is not the appropriate forum for a broad-based policy discussion of competitive 911 services.

The question raised in the Public Notice is plainly more appropriately suited for a generic rulemaking proceeding or notice of inquiry. In that context, the Commission can elicit and fully explore any concerns raised by the public and interested parties and, if necessary, craft appropriate federal rules to address those concerns. The Public Notice issued here -- addressing competitive 911 service in Virginia -- does not provide sufficient grounds for broad Commission policy action. A further, more generic proceeding would be legally necessary in any event.

Moreover, it would be contrary to the Act for the Commission to consider the issue raised in the Public Notice in this arbitration proceeding. Section 252(b)(4)(A)¹⁰ requires that state commission arbitrations limit their consideration of any arbitration petition to the issues set forth in the petition and the response. The policy question raised in the Public Notice is beyond the issues raised by the parties in the arbitration. Acting in place of the VSCC, the Commission properly should consider only the interconnection disputes raised in the petition and response, and should not somehow be improperly, and potentially unfairly, expanding the issues or opening the proceeding to other parties. Section 252(b)(4)(A) thus provides an additional reason why the question posed by the Public Notice should be addressed in a separate proceeding, rather than in the context of the instant arbitration.

III. 911 Competition Is Developing Irrespective of Section 251(c) Interconnection.

It is also important to note that Section 251(c) interconnection is not a prerequisite for competition in the provisioning of the 911 network. Embarq companies and Intrado have successfully reached a commercial agreement in Florida, as well as agreed to certain commercial terms in Ohio, pursuant to Section 251(a), demonstrating the parties' ability to reach mutually agreeable interconnection terms outside of Section 251(c). Embarq was prepared to negotiate

¹⁰ 47 U.S.C. § 252(b)(4)(A).

this same type of commercial agreement with Intrado in the last months of 2007, but Intrado instead elected to delay the commencement of competition in order to pursue arbitrations pursuant to Section 251(c). Thus, the development of competition has never been dependent upon, and has only been delayed by, Intrado's attempt to claim Section 251(c) interconnection rights. They are not necessary to the development of competition in 911 network services.

The Commission cannot properly use any potential policy considerations about 911 competition to disregard the failure of Intrado's proposed service offering to conclusively qualify as "telephone exchange service." The policy goal of developing competition in 911 network provisioning should not be used to confer Section 251(c) interconnection rights that do not otherwise exist under the applicable legal standard. Finding that Intrado's business model in Virginia falls short of Section 251(c) interconnection rights does not preclude competition in 911 service. Intrado may pursue Section 251(a) interconnection (as it has successfully done with Embarq in other states), or it may modify its business model and adjust its services to meet Section 251(c)'s statutory requirements. The present arbitrations will not dictate the future of competitive 911 services -- in Virginia or elsewhere.

IV. Conclusion

Embarq appreciates and shares the Commission's legitimate interest in policy issues related to competitive 911 service, but respectfully submits that an interconnection arbitration proceeding is not the inappropriate forum to debate those issues. The policy implications of competitive 911 service should neither influence nor delay decision on Intrado's Virginia arbitration petitions, including its mistaken assertion of Section 251(c) interconnection rights. Embarq explained in its other filings on the record in this proceeding that Intrado does not qualify for Section 251(c) interconnection under the Act because of the nature of Intrado's

business model and the structure of its service. This conclusion is governed by statute and is necessarily unaffected by policy issues raised in the Public Notice or sought to be introduced to the record by third parties.

Embarq agrees that the policy issue raised in the Public Notice is an important one. Nonetheless, such issues should be addressed in a free-standing, public proceeding -- not in the setting of an interconnection arbitration. In the present Virginia arbitration proceedings, the Commission must instead focus on the interconnection issues before it.

Respectfully submitted,

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Dated: July 6, 2009

CERTIFICATE OF SERVICE

I certify that on the 6th day of July, 2009, a copy of the foregoing Comments of Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq were served on the following parties:

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